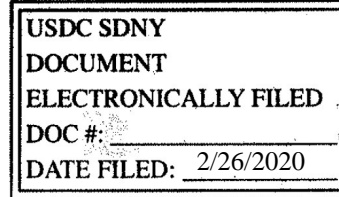


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
YESID RIOS SUAREZ,

Plaintiff,

- against -

UNITED STATES OF AMERICA,

Defendant.
-----X

17-CV-00133 (VSB) (SDA)

OPINION & ORDER

Appearances:

Yesid Rios Suarez
U.S. Penitentiary – McCreary
Pine Knot, New York
Pro Se

Jeffrey Coffman
United States Attorney’s Office for the Southern District of New York
New York, New York
Counsel for Defendant

VERNON S. BRODERICK, United States District Judge:

On January 6, 2017, Petitioner Yesid Suarez filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. §2255. By Opinion and Order dated November 27, 2017, Judge Forrest denied the motion, *sua sponte*. (Doc. 6). On January 29, 2018, Suarez filed a notice of appeal and request for certificate of appealability. (Doc. 7). By Opinion and Order dated February 5, 2018, Judge Forrest declined to issue a certificate of appealability. (Doc. 8). On May 31, 2018, the Second Circuit issued an order vacating Judge Forrest’s November 27, 2017 Opinion and Order to the extent that it *sua sponte* denied Suarez’s ineffective assistance of counsel claim and remanding in part for the court to further consider that claim “after securing a response from the Government and affidavits from Appellant’s attorneys.” (Doc. 11.)

On September 19, 2018, the case was reassigned to me. On January 7, 2019, Petitioner filed a motion challenging the Court's subject matter jurisdiction. (Doc. 32). On March 4, 2019, I referred the action to Magistrate Judge Stewart D. Aaron for a report and recommendation on Petitioner's § 2255 motion. (Doc. 33). On April 17, 2019, Judge Aaron entered an Order stating he would consider Petitioner's subject matter jurisdiction motion in connection with the § 2255 motion. (Doc. 34). Before me is Judge Aaron's June 3, 2019, Report and Recommendation, which recommends denying Petitioner's motions.

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

Here, the Report and Recommendation provided that "the parties shall have fourteen (14) days . . . from service of this Report and Recommendation to file written objections." (Doc. 33 at 22.) On June 24, 2020 Petitioner sought an extension to file objections to Judge Aaron's Report and Recommendation. (Doc. 36.) On June 27, 2019, I granted Petitioner's request and extended the time to file objections to July 29, 2019. (Doc. 37.) To date, Petitioner has not filed objections nor requested additional time to file objections. Because Petitioner has not submitted objections to the Report and Recommendation, I apply the clear error standard. *DiPilato*, 662 F. Supp. 2d at 339; *Lewis*, 573 F. Supp. 2d at 811; *Wilds*, 262 F. Supp. 2d at 169. I have reviewed Judge Aaron's thorough and well-reasoned Report and Recommendation for clear error and, after careful review, find none. I therefore adopt the Report and Recommendation in its entirety.

In addition, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253, and the Court


certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith.

The Clerk of Court is respectfully directed to terminate all pending motions and close the case.

The Clerk of Court is further directed to mail a copy of this Order to the pro se Petitioner.

SO ORDERED.

Dated: February 26, 2020
New York, New York


Vernon S. Broderick
United States District Judge